

## **ADMONITION NO. 22-17**

### **CLASSIFICATIONS:**

Failing to Seek Client's Lawful Objectives or Abide by Client's Decisions to Plead, Settle, Testify, or Waive Jury Trial [Mass. R. Prof. C. 1.2(a)]

Failing to Communicate with Client for Client Decisions or About Limits of Lawful Representation [Mass. R. Prof. C. 1.4(a)(1) and (b)]

### **SUMMARY:**

In 2017, the respondent prepared a will and related estate planning for an elderly client. In 2020, the respondent received a written request, apparently signed by the client, asking that copies of these documents be provided to the client's daughter. The respondent was concerned that the signature on the letter might not be authentic. He questioned the client's competency at this point in time due to his advancing age and worried, based on his awareness of strife within the client's family over a family business, that the daughter might be attempting to obtain a copy of her father's will without his consent. The respondent accordingly sent a letter to his client seeking an in-person meeting. The respondent did not receive any response from the client but did receive emails from the client's daughter demanding a copy of the 2017 will for both herself and her father.

The respondent sent a letter to his client, the daughter, and the two sons asking them to sign a release to permit him to provide the will to the daughter. The client's son and holder of a durable power of attorney ("POA") for his father called the respondent. The son stated that he, in fact, had concerns about the father's mental state and that the daughter might be trying to pressure the father to make changes to his estate plan. The son informed the respondent that he would get his father evaluated to determine his competency. The respondent took no action of his own to evaluate his client's competency or to ascertain from his client if he personally sent the original letter asking for his will to be sent to his daughter.

The respondent suggested that the son, as POA, execute a revocable trust to hold the father's assets in order to preserve them until the father's competency and desire to change the will had been established. The trust would be fiduciary in nature and provide that the assets were only to be passed as delineated in the 2017 estate plan. Because the trust would be revocable, the father could change it in the future.

The son agreed with the respondent's plan and transferred the father's assets to the revocable trust. The respondent, however, never consulted with his client to determine whether he agreed to transfer his assets to a revocable trust pending the outcome of his competence evaluation.

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The father died in 2022. At that time, his wishes, as memorialized in the 2017 estate planning documents, remained in place to be carried out through the revocable trust.

By failing to communicate with his client to determine his competency and directing his power of attorney to execute the revocable trust without obtaining his client's consent, the respondent violated Mass. R. Prof. C. 1.4(a)(1) and (b) and 1.2(a).

The respondent was admitted to the Massachusetts bar on December 17, 1997 and has no prior disciplinary history. The respondent received an admonition for his misconduct